

IN THE UNITED STATES DISTRICT COURT FOR THE  
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MIDDLE DISTRICT OF ALABAMA

2008 MAR 19 A 9:33

James McGivice, Jr.  
Plaintiff

DEBRA P. HACKETT CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

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CASE NO. 2:08cv189-MEF

Commissioner Robert Atwell  
Governor Bob Riley  
Defendant

MOTION FOR AN EMERGENCY TEMPORARY RESTRAINING  
ORDER AND PERMANENT ISSUANCE OF A PRELIMINARY INJUNCTION

COMES now the plaintiff James McGivice, Jr., [hereinafter McGivice] pursuant to Rule 65 (a) and (b) of the F.R.Civ.P. And request the granting of an emergency temporary restraining order transferring McGivice to St. Clair Correctional Facility Segregation unit to prevent irreparable mental and physical damage from the New terrorist within the Alabama Dept. of Corrections [A Doc], Greg Hendrix. As the defendants have admitted they are unable or unwilling to take the necessary actions against identifiable gang members to prevent the violation of McGivice's right against cruel and unusual punishment on the following grounds to wit:

STATEMENT OF THE CASE AND FACTS

1. In the year of 2004 McGivice was transferred to the Segregation Unit of Holman Correctional Facility. Upon arriving there gang members joined forces

with A homosexual named Costello, who Mc Gruce wrote A newspaper Article about murdering A man And the homosexual environment of Holman Prison.

2. The gang members declared Mc Gruce as verboten by them And started A psychology strategy called killing behind the doors. Wherein they take homo-sexual caricatures And call Mc Gruce the caricatures to deprive him of sleep, Social discord And to discredit him with other inmates, As A parish.

3. A former gang member A young man Mc Gruce didn't know by the name of Kenneth William was assigned in the cell next door to him K-4. Got wind of what the gang members were about to do to Mc Gruce And out of the blue told Mc Gruce to turn to the Christian daily bread booklet's given to them by the chaplins And to read January 21, 2008. It dealt with straight And courage that Dr. Martin Luther King sought from God what he was afraid. The former gang member 25 years of age Kenneth William's was trying to prepare Mc Gruce for the nefarious conduct the gang member's were going to assault him with. (Exhibit I)

4. Mc Gruce was transferred back to Holman Prison January 18, 2008. Two of the gang members that were in the Segregation unit in 2004 known to him As Reggie now And housed in cell 56 on the disciplinary segregation side of the unit And Luke - Matador Eric Thomas. Were still in the segregation unit And began the verbal assault upon Mc Gruce over more 24 hours A day And began to recruit other gang members to assist them. Calling Mc Gruce homo sexual caricatures to deprive him of sleep, Social discord And to discredit him with other inmates, As A parish. The gang members Reggie And Matador Eric Thomas organize this psychology method which gang members call killing behind the doors, Is using the walk time And

runnen system to pass notes to each other keeping the 24 hour a day psychological Assult going upon Mc Givis.

s. Mc Givis has requested of All supervisor subordinates to protect him, transfer him, file disciplinary action against the gang members and All have failed and refused to take my actions. They have even drawn smirking faces on his written complaint and accused him of just wanting a transfer and getting a problem.

b. On the 19th day of February, 2008 Mc Givis filed A complaint with defendant's Commissioner Robert Atter and Governor Bob Riley requesting protection. To the date of this legal filing the defendant's have failed and refused to protect him from the gang members psychological Assult.

(Exhibit II)

### GROUND FOR RELIEF

The defendant's have A constitutional obligation to protect Mc Givis while in the care, custody and control in the Alabama Dept. of Corrections, [ADCC].

Mc Givis has requested emergency relief on the grounds he is subject to psychological injury by gang members, who are subjecting him to physical injury in sleep deprivation, excessive high blood pressure, ulcer pain due to stress, paranoid and psychological deterrant's.

Ordinarily, the injury in a violation of An eighth Amendment claim the injury is obvious. But not always. This does not preclude suits by prisoners under the Eighth Amendment grounded solely on claims of psychological in-

"jury". The Constitution "does not countenance psychological torture merely because it fails to inflict physical injury". Hudson v. McMillian, 503 U.S. 1, 8, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992).

In Batcock v. White, 102 F.3d 267, 271 (7th Cir. 1996), the Seventh Circuit Court of Appeals discussed the type of injury actionable under Section 1983. Batcock pleaded with prison officials to protect him from members of a gang known as the Mexican Mafia. Even though never assaulted by anyone, he sued prison officials under Section 1983 for their purported deliberate indifference to his safety concerns. The district court granted summary judgment to the individual defendants.

On appeal Batcock in his brief, (sic) in Doe v. Welborn, 110 F.3d 520, 524, (7th Cir. 1997) [citing Batcock herein] Doe alleges, "the damages [ARE] the terror, psychological harm and deterioration, and suicide attempts that come from living with the constant threat of death. These damages ARE COMPENSABLE under the Eighth Amendment." But the court found not in Doe's case as he showed no injury.

But, the Doe court held in footnote 3 on page 524, "that injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm", was AVAILABLE.

McGinnis claim is made simply for injunctive relief, but is actionable as well for compensable damages. McGinnis is alleging that defendants are failing to protect him from the gang members psychological assault by not transferring him. But McGinnis has alleged that he ~~has~~ has in fact suffered physical damages -

of sleep deprivation, excessive high blood pressure that cause dizziness, head aches and sight impairment; ulcer pain due to stress, parasites and psychological deprivations. These damages are compensable under the Eighth Amendment. Id.

McGurk submits to this Court the Affidavit of former gang member Kenneth Williams. As evidence in support of the violation of his Eighth and Fourteenth Amendment rights by defendant Robert Atter and Gov. Bob Riley. William affests under oath that gang member Reggie and others have declared McGurk violated. McGurk cites A brief portion as an excerpt from Kenneth Williams' Affidavit, the remainder can be reviewed as Exhibit I:

"I'm a prison gang member and got wind that gang members know to me as Reggie housed in cell 56 disciplinary segregation was spreading around that McGurk was violated and recruiting others and home boys. To start the mind game we all sitting behind the doors to Row IV McDonald City. I didn't know McGurk but as an older guy had learned to respect him from simply talking with him. So being a prison gang member I knew what they were about to put him through and I knew no one was going to help or tell them..."

McGurk's claim of psychological injury does reflect the deprivations of "the minimal civilized measures of life's necessities". As McGurk has showed physical harm and the extreme psychological harm he is being subjected to by gang members and the defendants refusal and failure to protect, that supports a claim for damages under the Eighth Amendment. Fahmen v. Brown, 511 U.S. 825, (1991).

Due to the seriousness of the hostile environment the defendant's have Mr. Gatica housed in and refusal to protect, unwilling to protect or unable to protect, Mr. Gatica is requesting that an immediate order be issued transferring him to St. Clare Unit. As Mr. Gatica has a right to be secure in his person from violence, physical abuse and contagious disease. See: Nicholson v. Choctaw County, Ab. 498 F. Supp. 295 (A.C. Ab. 1980); Hopkins v. Bratton, 742 F.2d 1308 (C.A. 11 Ab. 1984) and Moore v. Morgan, 922 F.2d 1553 (C.A. 11 Ab. 1991).

### FURTHER RELIEF REQUESTED

1. That A TRO be immediately granted before defendant's Attorney can be heard, removing Mr. Gatica and prison gang member Kenneth Williams from Holman Correctional Facility. Before further irreparable mental and further physical injury can be inflicted upon Mr. Gatica by the gang member's psychological tactic of killing behind the doors, 24 hours a day. Transferring Mr. Gatica to St. Clare Unit and swapping his attorney inmate Robert Counsel back to Holman Unit.
- (A) That inmate Kenneth Williams has been threatening for violating the gang code by providing testimonial evidence in Mr. Gatica's behalf, and can no longer be housed in general population or segregation at Holman Unit and must be transferred.
2. That a hearing be held there after within 10 days for the granting of A permanent Preliminary injunction be issued preventing the ADCC from transferring and housing Mr. Gatica or Kenneth Williams At W.C. Holman Correctional Facility during their periods of incarceration within the ADCC.

3. That McGaugh be Appointed Counsel.

4. That McGaugh and his wife Kenneth Williams be transported to the Court for said hearing to give testimony and other witnesses, such as Officer Ronald Williams, inmates Antonio Wpcomb, Tracy Fowey # 199666 and Santos Bradford # 200884.

I hereby swear under the Penalty of perjury that the Aforementioned statements and witness content made by James McGaugh, Jr. are true and correct to the best of my knowledge and belief.

James McGaugh 3/1/08

CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of March, 2008, I have served a copy of this "Motion for an Emergency Temp. Res. ct", upon the following parties via United States Mail postage prepaid:

Comm. Robert Aller  
Attn: Dept. of Corrections  
P.O. Box 361501  
Montgomery, AL 36130-1508

Governor Bob Riley  
Governor's Mansion  
Montgomery, AL 36104

James McGaugh  
# 199395-K-3  
Hilton Unit 3403  
Atmore, AL 36503

## AFFIDAVIT OF Kenneth Williams

Before me a notary public in and for said county and state, personally appeared Kenneth Williams being duly sworn, deposed and says an oath that the agreements contained in the fore going are true to the best of his ability, ~~and~~  
Information, knowledge and belief as follows:

My name is Kenneth Williams #219273 I am over the age of twenty one and state that I'm housed at Holman prison in cell K-4 next door to cell K-3 that houses Inmate James McConico Jr since about January 18, 2008. I'm a prior gang member and got wind that gang member known to me as Reggie housed in cell 56 disciplinary segregation, was spreading around that McConico was violated and recruiting others and homeboys. to start the mind game we call killing behind the doors to run an individual crazy. I didn't know McConico but as an older guy had learn to respect him from simply talking with him. So being a prior gang member I knew what they were about to put him through and I knew no one was going to help him or tell on them. So I told him to go turn to our Christian Daily Bread Booklets given to us, January 21, 2008 where it talked about DR. Martin Luther King confessing to the Lord he was weak as the people looked to him for leadership. God told him to stand up for Righteousness, stand for truth and God would be at his side. I knew this was all I ~~could~~ could do for Mr. McConico because my generation has lost sight of respect for elders.

(1)

"Exhibit I"

The gang-members are working in 3 Shifts to abuse McConico and they organize how they will perform this each day by passing notes with the Hall Runners and going on the walk. They create their greatest verbal abuse doing showering when the nurses come around, when the officers aren't in the cell block and late at night. McConico IS UP all times of night listening because they keep calling out his name and asking me Did I hear Reggie again. McConico Didn't know who Reggie was walking to the shower calling him hoe's Fuck Boy's and Bitches, I told him who the guy was. Reggie and the others favor use of words is he's A Fuck nigger, he's Been Fucked, James McConico is A Fuck Boy, his homeBoys Said It.

McConico is losing it slowly as the embarrassment stress and lack of sleep is breaking his spirit, one day his voice broke and was forcing back tears as he told me he didn't even know these guys. The gang members use the ~~the~~ deceptive claim that McConico is talking about their mama to get the others in the cell block not to saying anything against them. But I have been the cell next door everyday since McConico was put in K-3 and not once has he said anything to the voices calling him names or Reggie doing the same.

(2)

Kenneth Williams  
Kenneth Williams

Sworn to and subscribed before me on this the 21 day of

FEB 2008

  
Charlie Portis  
Notary Public  
Commission Expires May 3, 2010

my commission expired

notary public

(3)

To: James Mc Givice, Sr.

#117395 - K-3

Holman Unit 3700

Atmore, AL 36503

To: Governor Bob Riley

Governor's Mansion

Montgomery, AL 36104

To: Commissioner Richard Allow

Alabama Dept. of Corrections

P.O. Box 301501

Montgomery, AL 36130-1501

Date: 2/11/08

Re: Complaint due to gay members harassment and the failure of the Holman Unit Administration to take any action.

COMPLAINT

Mc Givice has filed two complaints with the principle parties responsible for the security and his protection in the segregation unit at Holman Correctional Facility, Warden Grant Culver and Captain Bishop. About the verbal abuse and sleep deprivation he is being subject to by gay members 24 hours a day. Two or three years ago Mc Givice wrote an article in the newspaper about the -

Senseless killing of A man by two homosexual At Holman Prison And the homosexual environment. Many of the gay member's of the mobile Area Are gay And supported the slaves that committed this murder. The gay members who have declared MC Graw Violated, As gay member all it is known to him As Reginald (Reggie) Assigned to cell 56 disciplinary segregation side Last Name unknown to me as of February 28, 2008. And one Name Flute, his Nick Name.

In the year 2008 Mr. Graw was returned to the Holman segregation unit JANUARY 18, 2008 And the gay members initiated A 24 hour A day Verbal Assult with numerous other gay members riding And Assisting him Using Mc Graw homosexual creatures to deprive him of sleep, social disval, and to dis credit him with other prisoners, As A Parish.

Mc Graw Requested of Warden Culver And Captain Bishop to bring this gay member And him to their office to resolve this situation on the 12<sup>th</sup> And 14<sup>th</sup> days of February, 2008, both Negligently failed to take any action. The gay members names Reginald And Flute have received other gay members to assist them in the psychology method gay members all killing behind the doors using the wall fire And Review system to pass Notes to organize this Verbal Assult upon Mc Graw.

All Delegation officer's And supervisor's when going Around the Unit doing distribution of medication go right by Reginald's cell And the majority of the gay members pre taking in the Refectory Conduit in the disciplinary (segregation) side of the unit.

Inmates Reginald and Fluke for A month have verbally stated openly  
Corrco Is a hoe or gay and a host of other homosexual creatures in front  
of the female and male nurses. The supervisor's and officers have listen to this  
Violation of AR 403 creating A institutional security safety hazard, and have  
not reported it, written one incident report of the gay activity or take  
disciplinary action against the inmates.

The Negligent acts of the Correctional officers, Culliver and Bishop has  
medically effected Mr. Gaito as his high blood pressure is elevated. Due to the  
lack of sleep and stress caused by the gay members Verbal Assault on him and  
psychology torture of him to enforce their violation of Mr. Gaito. These violent  
acts of the gay members violate Mr. Gaito's Eighth and Fourteenth Amendment rights  
and the neglect is knowingly and willfully by Culliver, Bishop and the Segregation  
officers on all three segregations shifts at Holmes Segregation Unit.

This is a rampant problem with gay members throughout the Abem Dept. of  
Corrections, being covered up, because the department has no facility in place like other  
states to house these violent gay members in. This is the second attack Mr. Gaito has been  
subject to within the Segregation unit at Holmes Unit within the past two years or  
so and the supervisors were aware of this anger before transferring Mr. Gaito to  
Holmes Unit Segregation unit.

I'm requesting one of the following forms of relief be provided to enforce  
Mr. Gaito's Constitutional Rights:

- (1) Consultation with the gay members known as Reginald and Fluke specifically-

Reginald in cell 56 of disciplinary segregation,

- (2) Disciplinary action and restraining of the segregation officers in gang activity before some inmate loses his life;
- (3) Transfer of Mr. Givens back to St. Clair Unit and his enemy Robert Counsel is transferred back to Holmes Unit immediately;
- (4) Suspension of all privileges including walking until gang activity ceases;
- (5) Disciplinary action Against All Identifiable gang members that the Correctional officers have Ignored;
- (6) Increase funding to build A max security facility for housing of violent gang members.

for the City

cc: Walter Grant Collier  
Captain Bishop